

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

MARCO ANTONIO ALCARAZ-
GUERRERO,

Plaintiff,

v.

USA,

Defendant.

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CIVIL ACTION NO. 5:17-CV-00183-RWS

**MEMORANDUM ORDER ADOPTING THE MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION**

Movant, Marco Antonio Alcaraz-Guerrero, a federal prisoner, filed this motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255.

The Court referred this matter to the Honorable Caroline Craven, United States Magistrate Judge, at Texarkana, Texas, for consideration pursuant to applicable laws and orders of this Court. After conducting an evidentiary hearing, the Magistrate Judge recommends the motion be denied. Docket No. 38.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, and pleadings. Movant acknowledged receipt of the Report and Recommendation on September 24, 2018 (Docket No. 39). No objections to the Report and Recommendation of United States Magistrate Judge have been filed by the parties. Thus, any aggrieved party is barred from *de novo* review by the district court of the proposed findings and recommendations of the Magistrate Judge.

Having reviewed the Magistrate Judge's Report and Recommendation, the Court agrees

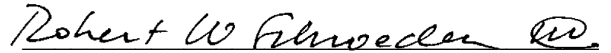
that Petitioner's arguments of ineffective assistance of counsel for failure to produce more evidence of cooperation at the sentencing hearing and sentencing disparity based on racial basis are unsupported by evidence in the record. Docket No. 38 at 14–16. The Court further agrees with the Magistrate Judge that Petitioner has demonstrated a clear intent to abandon his remaining claims. *Id.* at 17.

There being no grounds of plain error or manifest injustice, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge as the findings and conclusions of this Court. A Final Judgment will be entered in this case in accordance with the Magistrate Judge's recommendations.

Furthermore, the Court is of the opinion movant is not entitled to a certificate of appealability. An appeal from a judgment denying post-conviction collateral relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253. The standard for a certificate of appealability requires the movant to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004). To make a substantial showing, the movant need not establish that he would prevail on the merits. Rather, he must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483-84. Any doubt regarding whether to grant a certificate of appealability should be resolved in favor of the movant, and the severity of the penalty may be considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280-81 (5th Cir.), *cert. denied*, 531 U.S. 849 (2000).

In this case, movant has not shown that any of the issues would be subject to debate among jurists of reason. The questions presented are not worthy of encouragement to proceed further. Therefore, the movant has failed to make a sufficient showing to merit the issuance of certificate of appealability. Accordingly, a certificate of appealability will not be issued.

SIGNED this 19th day of November, 2018.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE